IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1157 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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TALUKA DEVELOPMENT OFFICER - Petitioner(s)

Versus

BAVAJI BIHARIDAS DHARAMDAS DHUDHRAJIA & 1 - Respondent(s)

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Appearance :

MR HS MUNSHAW for Petitioner No(s).: 1.

MR PH PATHAK for Respondent No(s).: 1.

MR IM PANDYA A.G.P. for Respondent No(s).: 2.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 23/08/2005

ORAL JUDGMENT

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1. This petition is directed against the judgment and award dated 19th August, 1999 passed by the Labour Court, Junagadh in Reference [L.C.J.] No. 1633/90, whereby the Labour Court has directed the petitioner to reinstate respondent no. 1 in service with 30% back

wages.

2. The short facts of the case are that respondent no. 1 was working as a Driver with the petitioner. It is the case of respondent no. 1 that his appointment was extended as when the work was available with artificial breaks. Thereafter respondent no. 1 was appointed on daily wage basis and he worked as such upto 30th September, 1987. The petitioner without following any procedure under the Industrial Disputes Act, 1947, terminated the services of respondent no. 1 w.e.f. 26th July, 1988.

2.1. Feeling aggrieved by the said order, respondent no. 1 raised an industrial dispute which was ultimately referred to the Labour Court for adjudication. The Labour Court after appreciating the materials produced before it passed the impugned award. Hence, this petition.

3. I have heard the learned counsel for the parties. Having perused the materials produced on record, it transpires that the Labour Court has not committed any error in ordering to reinstate the respondent in service. The Labour Court found that respondent no. 1 had

completed 240 days work. Thus, I am in complete agreement with the reasonings adopted and findings arrived at by the Labour Court for awarding reinstatement with continuity in service to respondent no. 1.

4. Having gone through the award, it appears that the Labour Court has not given any cogent reasons while awarding back wages to the respondent. An order of payment of back wages cannot be passed in a mechanical manner, but a host of factors are to be taken into consideration before passing any such order. In the present case, the Labour Court has awarded back wages while granting the benefit of doubt to the respondent.

4.1. Moreover in the principle laid down by the Apex Court in the case of **Ram Ashrey Singh v. Ram Bux Singh reported in (2003) II L.L.J. p. 176** and in the case of **General Manager, Haryana Roadways v. Rudhan Singh reported in J.T. 2005 (6) S.C. p. 137 [2005 (5) S.C.C. p. 591]**, the respondent herein cannot be said to be entitled for back wages. Hence, the impugned award qua granting the back wages is required to be quashed and set aside.

5. In the result, the petition is partly allowed. The impugned award dated 19th August, 1999 passed by the Labour Court, Junagadh in Reference [L.C.J.] No. 1633/90, qua back wages is quashed and set aside and rest of the award is confirmed. The petitioner shall reinstate respondent no.1 on or before 3rd October, 2005. Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]

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